

## **103 KAR 15:090. Computing the amortization deduction for intangible assets.**

RELATES TO: KRS 141.010

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation explains the provisions of income tax law pertaining to the allowable amortization deduction for intangible assets.

Section 1. Intangible Asset Amortization Rules. (1) Internal Revenue Code Section 197, contained in the 1993 Federal Revenue Reconciliation Act, provides that specified intangible assets shall be amortized over a fifteen (15) year period. For federal income tax purposes, Internal Revenue Code Section 197 is effective for intangible assets acquired after August 10, 1993. It also allows for retroactive application to intangible assets acquired after July 25, 1991.

(2) Kentucky adopted the provisions of Internal Revenue code Section 197 for taxable years beginning on or after January 1, 1994. Kentucky did not adopt the retroactive provisions of Internal Revenue Code Section 197. Therefore, the Kentucky amortization deduction for 1991, 1992, and 1993 shall be determined in accordance with the Internal Revenue Code in effect December 31, 1989 or December 31, 1991 depending upon the year of acquisition of the intangible asset. For any Section 197 asset acquired prior to January 1, 1994, the following Kentucky and federal differences exist:

(a) The amount of amortization deductions claimed in taxable years beginning before January 1, 1994;

(b) The amount of accumulated amortization;

(c) The amount of adjusted bases; and

(d) The number of years amortized.

(3) For taxable years beginning after December 31, 1993, the Kentucky amortization deduction for Section 197 assets for the taxable year shall be the same amount as determined under Internal Revenue Code Section 197, limited to 100 percent of the cost of the asset. It is possible to fully amortize a Section 197 asset for Kentucky income tax purposes earlier than for federal income tax purposes or have a Kentucky adjusted basis that is not fully amortized. Differences in federal and Kentucky adjusted bases are recognized when calculating the gain or loss upon disposition of the intangible asset.

Section 2. Examples. (1) A calendar year taxpayer acquires goodwill in August of 1991 and in 1993 elects for federal income tax purposes to retroactively treat the goodwill as a Section 197 intangible asset. The allowable amortization deduction is claimed on amended federal returns for 1991 and 1992 and the original federal return for 1993. The amortization deduction is not allowable for Kentucky purposes prior to 1994. Therefore, there is no need to amend the Kentucky returns for 1991 and 1992, and the 1993 Kentucky return reflects no amortization deduction. Beginning with the calendar year 1994, the taxpayer shall deduct the same amount of amortization for Kentucky purposes as for federal purposes for the remainder of the fifteen (15) year amortization period provided by Internal Revenue Code Section 197. When the asset is fully amortized for federal purposes, the Kentucky deduction ceases even though an adjusted Kentucky basis remains. If the asset is disposed of, the difference in the adjusted Kentucky basis and the adjusted federal basis shall be recovered in the amount of gain or loss reported for Kentucky purposes.

(2) A calendar year taxpayer acquires a trademark in August of 1991 and in 1993 elects for federal income tax purposes to retroactively treat the trademark as a Section 197 intangible asset subject to the fifteen (15) year amortization rules. Prior to the Federal Revenue Reconciliation Act of 1993, trademark and trade name expenditures were amortized over sixty (60) months for both federal and Kentucky income tax purposes. Amended federal returns are filed for 1991 and 1992 re-

flecting the new Internal Revenue Code Section 197 treatment. The original 1993 federal return is also filed reflecting the new Internal Revenue Code Section 197 treatment. The amended federal returns reduce the previously claimed amortization deductions from five (5) year amortization amounts to fifteen (15) year amounts. Amended Kentucky returns are not needed for 1991 and 1992 because the Kentucky amortization amount does not change. The five (5) year amortization period continues to apply for the 1993 Kentucky return. Beginning with the calendar year 1994, the Kentucky deduction is the same amount as the federal deduction, until the adjusted Kentucky basis is reduced to zero. If the asset is disposed of before the adjusted federal basis is reduced to zero, the difference in the adjusted Kentucky basis and the adjusted federal basis will result in a difference in the calculated gain or loss for Kentucky and federal purposes. (21 Ky.R. 1588; Am. 2473; eff. 4-6-95.)